

Update on the Screening of Third Country Transactions Bill 2022: potential impact on pending or recently completed transactions

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| The Screening of Third Country Transactions Bill 2022

We continue to follow the passage of the Screening of Third Country Transactions Bill 2022 ('the Bill'), a further version of which was promulgated in January 2023 after it passed the third stage in the Dáil Éireann.

The Bill will make transactions above a deal value of €2 million and which result in the acquisition by a party from a third country (i.e., a country other than Ireland, the EU, the EEA or Switzerland) of a controlling interest in an Irish undertaking (or the increase of an existing interest from less than 25% to more than 25%) if the transaction relates to or impacts critical infrastructure, technologies, inputs such as energy, raw materials and food, access to "sensitive information" (including personal data) and media freedom in Ireland notifiable not less than 10 days before completion and subject to vetting by the Minister for Enterprise, Trade and Employment. The Minister is ultimately authorised to impose a variety of conditions on a transaction, including not to complete it or parts of it.

Aims of the Bill

The Bill is aimed at overseeing transactions where third country parties assume control of strategic assets and which are likely to affect security or public order in Ireland, hence its focus on "critical" industries such as energy, health, communications, aerospace, defence, biotechnology and the like. Appeals against "screening decisions" taken by the Minister in respect of transactions affected by the Bill will lie to a panel of adjudicators appointed by the Minister, with a further appeal to the courts on points of law.

Importantly, the Minister is authorised to interrogate even a transaction involving a third

country's acquisition of control of a strategic asset which was not notifiable under the Bill if s/he has reasonable grounds to believe it would affect security or public order in Ireland. The Minister is likewise authorised to investigate (and potentially unwind) transactions which complete in the 15 month period prior to the entry into force of the Bill. The potential retrospective application of the Bill means that anyone from a third country involved in a recent or pending transaction in Ireland falling within one of the critical industry areas covered by the Bill should pay close attention as the Bill moves towards implementation.

In the UK, the UK National Security and Investment Act, 2021, which came into force in January 2022 was used by the UK's Secretary of State for Business, Energy and Industrial Strategy to unwind a July 2021 transaction. There, the Holland based Nexperia was ordered to divest the controlling interest it acquired in Newport Water Fab on grounds of national security.

For more information on this area, please contact Dom or Matt via their details below, or any other Ogier Leman corporate team member.

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